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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

DAVID SPADE and KATINA SPADE,
H/W, Individually and as a Class
Representative on Behalf of Others
Similarly Situated,

Plaintiffs,

v.

SELECT COMFORT
CORPORATION, d/b/a SLEEP
NUMBER, LEGGETT & PLATT,
INCORPORATED and John Doe
Individuals and Businesses 1-20,

Defendants.

Civil Action No. 3:15-cv-01826
(PGS)(DEA)

**NOTICE OF MOTION OF APPEAL
OF THE MAGISTRATE JUDGE'S
OCTOBER 25, 2018 ORDER
GRANTING PLAINTIFFS' MOTION
FOR LEAVE TO FILE AN AMENDED
COMPLAINT [ECF NO. 62]
PURSUANT TO FED. R. CIV. P. 72
AND L. CIV. R. 72.1(c)**

**ORAL ARGUMENT REQUESTED
Motion Date: December 3, 2018**

Document Filed Electronically

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PLEASE TAKE NOTICE that on December 3, 2018, or soon thereafter as counsel may be heard, Defendant Sleep Number, by and through its undersigned counsel, shall appeal by motion, pursuant to Federal Rule of Civil Procedure 72 and Local Civil Rule 72.1(c), to the Honorable Peter G. Sheridan, U.S.D.J., at the Clarkson S. Fisher Building & U.S. Courthouse, 402 East State Street, Court Room 4E, Trenton, New Jersey 08608, from the October 25, 2018 Order Granting Plaintiffs' Motion for Leave to File An Amended Complaint of the Honorable Douglas E. Arpert, U.S.M.J. (ECF No. 62). The Order should be reversed because: (i) it did not include reasons or explanation for the decision; (ii) Plaintiffs' proposed amended complaint is outside the scope of the Third Circuit's remand order; (iii) Plaintiffs waived the ability to assert the claims in the proposed amendment; (iv) Plaintiffs failed to offer and do not have a compelling reason

justifying a post-judgment amendment; (v) allowing Plaintiffs to file the proposed amendment would be futile because it fails to state a claim upon which relief can be granted.

PLEASE TAKE FURTHER NOTICE that Sleep Number will rely on the Memorandum of Law submitted in support of this appeal. There is no transcript as no argument was heard.

PLEASE TAKE FURTHER NOTICE that a proposed form of Order is submitted herewith.

PLEASE TAKE FURTHER NOTICE that oral argument is requested.

Dated: November 8, 2018

/s/ Karen A. Confoy

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